

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

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|---------------------------------|---|-----------------------------|
| IN THE MATTER OF: |) | Docket SRPD: SRPD05/06SCC- |
| |) | 4344 |
| Delphi Automotive Systems Corp. |) | |
| 1201 N. Magnolia Avenue |) | CORRECTIVE ACTION |
| Anaheim, CA 92801 |) | CONSENT AGREEMENT |
| EPA ID#: CAD008323396 |) | |
| |) | |
| Respondent. |) | |
| |) | Health and Safety Code |
| |) | Sections 25187 and 25200.14 |
| _____ |) | |

INTRODUCTION

1. The Department of Toxic Substances Control (DTSC) and Delphi Automotive Systems Corporation, a Delaware corporation (Respondent) enter into this Corrective Action Consent Agreement (Consent Agreement) and agree as follows:

1.1. Jurisdiction exists pursuant to Health and Safety Code sections 25187 and 25200.14, which authorize DTSC to issue an order to require, or enter into a consent agreement to cooperate in the implementation of, corrective action when DTSC determines that there is or may be a release of hazardous waste or hazardous waste constituents into the environment from a hazardous waste facility.

1.2. The parties enter into this Consent Agreement to avoid the expense of litigation and to carry out promptly the corrective action described below.

1.3. Respondent is the owner and former operator of a hazardous waste facility located on the property at 1201 N Magnolia Avenue, Anaheim, California (Facility).

1.4. Since 1999, Respondent engaged in the management of hazardous waste pursuant to a Permit By Rule issued by DTSC on July 8, 1993. Prior to 1999, such hazardous waste management was engaged in by Respondent's predecessor, General Motors Corporation (GM).

1.5. The terms used in this Consent Agreement are as defined in California Code of Regulations, title 22, section 66260.10, except as otherwise provided.

1.6. Subject to Sections 20 and 21 of this Consent Agreement, Respondent agrees to implement all DTSC-approved workplans and to undertake all actions required by the terms and conditions of this Consent Agreement, including any portions of this Consent Agreement incorporated by reference.

1.7. Respondent waives any right to request a hearing on this Consent Agreement pursuant to Health and Safety Code section 25187.

FINDINGS OF FACT

2.1. On March 6, 1981, Respondent's predecessor, GM, was granted RCRA Interim Status by the Department of Health Services (predecessor to the DTSC) to operate an on-site Hazardous Waste Treatment Facility

2.2. On June 22, 1989, DTSC granted GM a variance from the Hazardous Waste Facility Permit Requirements of Chapter 30 of Division 4.5, Title 22, California Code of Regulations. The variance was for a period of three (3) years.

2.3. On May 1, 1993, GM submitted to DTSC an Onsite Hazardous Waste Treatment Notification to operate a wastewater treatment unit and an oil water separator under Permit by Rule.

2.4. On December 27, 1996, GM submitted a Phase I Environmental Assessment pursuant to Health and Safety Code section 25200.14 to DTSC.

2.5. Respondent acquired the Facility and commenced operation of the lead acid battery manufacturing at the Facility pursuant to a 1999 "spin off" of all of Respondent's assets by GM, and the resultant creation of Respondent as a new corporation. Respondent became a public corporation on February 6, 1999 with its initial public offering of common stock. GM ceased owning common stock of Respondent in May 1999, thereby making GM and Respondent wholly separated.

2.6. Respondent ceased battery manufacturing in the spring of 2005.

2.7. On August 5, 2005 the City of Anaheim referred the cleanup of the lead contamination found at the Facility to DTSC.

2.8. On October 8, 2005, Respondent filed voluntary petitions for reorganization relief under Chapter 11 of the United States Bankruptcy Code in the Bankruptcy Court ("Bankruptcy Court") for the Southern District of New York, Case No. 05-44481 ("Bankruptcy Case").

2.9. Based on the information available to DTSC, DTSC concludes that further investigation is needed to determine the nature and extent of releases of hazardous waste or hazardous waste constituents at the Facility.

2.10. The hazardous waste and hazardous waste constituents of concern at the Facility are metals including, but not limited to, lead and arsenic, as well as petroleum hydrocarbons, volatile organic compounds, semi-volatile organic compounds, and polychlorinated biphenyls ("Constituents of Concern").

2.11. Hazardous wastes or hazardous waste constituents may have migrated or may migrate from the Facility into the environment through the following pathways: subsurface soils, groundwater, and vapor.

2.12. The Facility is located within an industrial complex. There are homes and a public park located approximately 250 yards west and northwest of the Facility.

2.13. Releases from the Facility may migrate or may have migrated offsite.

PROJECT COORDINATOR

3. Within 14 days of the effective date of this Consent Agreement, DTSC and Respondent shall each designate a Project Coordinator and shall notify each other in writing of the Project Coordinator selected. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Agreement and for designating a person to act in his/her absence. All communications between Respondent and DTSC, and all documents, report approvals, and other correspondence concerning the activities performed pursuant to this Consent Agreement shall be directed through the Project Coordinators. Each party may change its Project Coordinator with at least seven days prior written notice to the other party.

WORK TO BE PERFORMED

4. Respondent agrees to perform the work required by this Consent Agreement in accordance with the applicable state and federal laws, their implementing regulations, and the applicable DTSC and the United States Environmental Protection Agency guidance documents.

FACILITY INVESTIGATION (FI)

5.1 Respondent has submitted to DTSC a Current Conditions Report and Facility Investigation (FI) Workplan and has implemented the FI Workplan. Within 60 days of the effective date of this Consent Agreement, Respondent shall submit to DTSC an FI Report presenting the results of the FI. The FI Report shall set forth the delineation of the lateral and vertical extent of the concentrations of the Constituents of Concern released at and/or from the Facility into soil and groundwater. The FI Report shall contain an assessment of whether interim measures should be implemented at the Facility, and a Risk Assessment that complies with Section 8 of this Consent Agreement. DTSC will review the FI Report and notify Respondent in writing of DTSC's approval or disapproval.

5.2 DTSC may require additional investigation of releases of Constituents of Concern at and/or from the Facility. Within 45 days of DTSC's written determination to the Respondent that additional investigation is required, Respondent shall submit to DTSC for review and approval a work plan for implementing the additional investigation work consistent with the Scope of Work for a Facility Investigation contained in Attachment 4 of this Consent Agreement. The FI workplan shall include a schedule for implementing the additional investigation work.

5.3 If DTSC requires such additional investigation, Respondent will submit to DTSC for review and approval an addendum to the FI Report presenting the results of such additional investigation. DTSC will review the FI Report with the addendum and notify Respondent in writing of DTSC's approval or disapproval.

INTERIM MEASURES

6.1. DTSC's approval of the FI Report will include a determination of whether interim measures (IM) must be implemented at the Facility.

6.2. If DTSC determines IM are required, within 45 days of DTSC's approval of the FI Report which requires IM, Respondent shall submit to DTSC an IM Workplan for review and approval by DTSC for implementation of IM to address releases of the Constituents of Concern at and/or from the Facility, the scope of which shall be set forth in the IM Workplan. The IM Workplan shall identify and evaluate IM, and include any additional data collected subsequent to submission of the FI Report and a schedule for implementation of IM. The IM Workplan, and, if required by DTSC, an IM Operation and Maintenance Plan, and IM Plans and Specifications, shall each be developed in a manner consistent with the Scope of Work for Interim Measures Implementation contained in Attachment 1 of this Consent Agreement.

6.3. If at any time Respondent identifies an immediate or potential threat to human health and/or the environment, discovers new releases of hazardous waste and/or hazardous waste constituents, or discovers new solid waste management units not previously identified, Respondent shall notify the DTSC Project Coordinator orally within 48 hours of discovery and notify DTSC in writing within 10 days of discovery, summarizing the findings, including the immediacy and magnitude of the potential threat to human health and/or the environment. Within 30 days of receiving DTSC's written request for a Supplemental IM Workplan, Respondent shall submit to DTSC for review and approval a Supplemental IM Workplan that identifies supplemental IM that will mitigate the threat. The Supplemental IM Workplan shall be developed in the same manner and the same scope as the IM Workplan. If DTSC determines that immediate action is required, DTSC Project Coordinator may orally authorize the Respondent to act prior to DTSC's receipt of the Supplemental IM Workplan.

6.4. If DTSC identifies an immediate or potential threat to human health and/or the environment, discovers new releases of hazardous waste and/or hazardous waste constituents, or discovers new solid waste management units not previously identified, DTSC will notify Respondent in writing. Within 30 days of receiving DTSC's written notification, Respondent shall submit to DTSC for approval a Supplemental IM Workplan that identifies and evaluates supplemental IM that will mitigate the threat or potential threat. The Supplemental IM Workplan shall be developed in the same manner as the IM Workplan. If DTSC determines that immediate action is required, DTSC Project Coordinator may orally authorize Respondent to act prior to receipt of the Supplemental IM Workplan.

6.5. All IM Workplans (principal, and, if necessary, Supplemental IM Workplans) shall ensure that the IM are designed to mitigate the IM constituents of concern, and, to the extent practicable, be consistent with the objectives of, and contribute to the performance of, any final corrective measures which may be required at the Facility.

6.6. Concurrent with the submission of an IM Workplan, Respondent shall submit to DTSC a Health and Safety Plan in accordance with the Scope of Work for a Health and Safety Plan contained in Attachment 2 of this Consent Agreement.

6.7. If required by DTSC, concurrent with the submission of an IM Workplan, Respondent shall submit to DTSC for approval a Community Profile in accordance with the Scope of Work for a Community Profile contained in Attachment 3 of this Consent Agreement. Based on the information provided in the Community Profile, if DTSC determines that there is a high level of community concern about the Facility, DTSC may require Respondent to prepare a Public Participation Plan.

6.8. If required by DTSC, Respondent shall prepare and submit to DTSC for approval an IM Fact Sheet that summarizes the findings of the FI and the proposed IM to be implemented. The IM Fact Sheet shall be submitted to DTSC in accordance with the schedule contained in the IM Workplan. DTSC will review the IM Fact Sheet and notify Respondent in writing of DTSC's approval or disapproval, including any comments and/or modifications. If DTSC disapproves of the IM Fact Sheet, within 30 days of receipt of DTSC's disapproval, Respondent shall submit a revised IM Fact Sheet to DTSC for approval. When DTSC approves the IM Fact Sheet, Respondent shall mail the approved IM Fact Sheet to all individuals on a mailing list established pursuant to California Code Regulations, title 22, section 66271.9(c)(1)(D), within 15 calendar days of receipt of written approval.

6.9 Upon DTSC's approval of the IM Workplan or a Supplemental IM Workplan, Respondent shall implement the IM or Supplemental IM according to the schedule set forth therein.

6.10 Within 60 days of the completion of the IM, Respondent shall submit an IM Report to DTSC for review and approval that evaluates the effectiveness of the IM in achieving the site-specific action levels and cleanup standards for the Facility.

CLOSURE OF THE WASTEWATER TREATMENT UNIT UNDER INTERIM STATUS

7.1. Within 60 days of the effective date of this Consent Agreement, Respondent shall submit to DTSC a Closure Plan for the treatment unit that operated under Interim Status in accordance with California Code of Regulations, title 22, sections 66265.112 and 66265.197. The Closure Plan is subject to review and approval by DTSC.

7.2. DTSC will provide the public with an opportunity to review and comment on the Closure Plan. Depending on the level of community concern, DTSC may conduct a public hearing to obtain comments. DTSC shall use its best efforts to coordinate its public participation and California Environmental Quality Act (CEQA) efforts associated with the approval of the IM under Section 6 of this Agreement and closure under this Section 7 of this Agreement to avoid requiring Respondent to conduct duplicative or redundant activities.

7.3. Following the public comment period, DTSC will provide written approval or require Respondent to revise the draft Closure Plan.

7.4. Respondent shall implement the DTSC-approved Closure Plan.

7.5. Within 60 days of completion of closure, the Respondent shall submit to DTSC a certification that the wastewater treatment unit has been closed in accordance with the approved Closure Plan. The certification must be signed by the Respondent and a registered professional engineer.

7.6. Effective immediately, Respondent shall comply with the financial assurance requirements in California Code of Regulations, title 22, section 66265.140 et seq. for closure of the wastewater treatment unit.

RISK ASSESSMENT

8.1. Respondent shall conduct a Risk Assessment and include it in the FI Report submitted to DTSC under Section 5 of this Consent Agreement. Such Risk Assessment shall evaluate the actual and/or potential human health risk, and establish site-specific action levels and cleanup standards to address those Constituents of Concern released at and/or from the Facility. Based on current conditions at the Facility and the Facility vicinity, an ecological risk assessment is not required.

8.2. If IM are performed and if the IM do not achieve the site-specific action levels and cleanup standards for the Facility, Respondent shall conduct a Supplemental Risk Assessment to evaluate actual and/or potential human health risks due to the Constituents of Concern that remain after the implementation of the IM. If DTSC determines that a Supplemental Risk Assessment is required, Respondent shall submit to DTSC for approval a Supplemental Risk Assessment Workplan within 60 days of DTSC's determination that a Supplemental Risk Assessment is required.

8.3. DTSC shall review the Supplemental Risk Assessment Workplan and notify Respondent in writing of DTSC's approval or disapproval. Respondent shall submit to DTSC for approval a Supplemental Risk Assessment Report in accordance with the DTSC-approved Supplemental Risk Assessment Workplan schedule. DTSC shall review the Supplemental Risk Assessment Report and notify Respondent in writing of DTSC's approval or disapproval.

CORRECTIVE MEASURES PROPOSAL

9. Within 45 days of DTSC's approval of the FI Report, Respondent shall submit to DTSC for DTSC's review and approval a Corrective Measures Proposal (CMP) which describes in detail the corrective measures proposed to protect human health and the environment from the Constituents of Concern. The CMP must include (1) a description of corrective measures to be implemented at the Facility, (2) an explanation of how the proposed corrective measures are consistent with the FI Report, the IM Report (if required) and any Supplemental IM Report (if required), applicable state and federal laws, their implementing regulations, and applicable DTSC and United States Environmental Protection Agency guidance, (3) proposed clean up objectives and points of compliance, (4) a detailed description and schedule to construct and implement the corrective measures, and (5) an analysis of at least two (2) other alternative corrective measures considered before selecting the preferred corrective measure. The CMP shall also provide the basis and justification for these decisions. Solely for the proposed corrective measures, the CMP shall be developed in a manner consistent with the Scope of Work for Corrective Measures Proposal contained in Attachment 5 of this Consent Agreement. If

requested by DTSC, Respondent shall prepare, as part of the CMP, treatability or pilot studies for the proposed corrective measures that involve treatment or a demonstration of the effectiveness of the proposed corrective measures, unless Respondent can demonstrate to DTSC's satisfaction that such studies are not needed. The workplan for such studies shall include, at a minimum, the conceptual design, a schedule for conducting the studies, or, alternatively, Respondent's justification for not conducting the studies.

SELECTION OF CORRECTIVE MEASURES

10.1. DTSC will provide the public with an opportunity to review and comment on the final draft of the CMP, DTSC's proposed final corrective measures for the Facility, and DTSC's justification for selection of such corrective measures. Depending on the level of community concern, DTSC may conduct a public hearing to obtain comments.

10.2. Following the public comment period, DTSC may select final corrective measures or require Respondent to revise the CMP.

10.3. DTSC will notify Respondent of the final corrective measures selected by DTSC in the Final Decision and Response to Comments. The notification will include DTSC's reasons for selecting the corrective measures.

CORRECTIVE MEASURES IMPLEMENTATION

11.1. Within 60 days of Respondent's receipt of written notification of DTSC's Final Decision and Response to Comments, Respondent shall submit to DTSC for DTSC's review and approval a Corrective Measures Implementation (CMI) Workplan.

11.2. If required by DTSC, concurrent with the submission of a CMI Workplan, Respondent shall submit to DTSC a Health and Safety Plan in accordance with the Scope of Work for a Health and Safety Plan contained in Attachment 2 of this Consent Agreement.

11.3. If engineering controls are required as part of the final corrective measures, the CMI Workplan shall include the design, construction, operation, maintenance, and monitoring of corrective measures at the Facility called for by the final corrective measures selected in Section 10 of this Consent Agreement.

11.4. In accordance with the schedule contained in the approved CMI Workplan, Respondent shall submit to DTSC for approval the documents listed below, to the extent DTSC deems applicable. These CMI documents shall be developed in a manner consistent with the Scope of Work for Corrective Measures Implementation contained in Attachment 6 of this Consent Agreement.

- Operation and Maintenance Plan
- Draft Plans and Specifications
- Final Plans and Specifications
- Construction Workplan
- Construction Completion Report

- Corrective Measures Completion Report

11.4. DTSC will review all required CMI documents and notify Respondent in writing of DTSC's approval or disapproval.

FINANCIAL ASSURANCE

12.1. Within 30 days of DTSC's approval of the CMI Workplan, Respondent shall prepare and submit to DTSC for review and approval a detailed written estimate of the cost of the CMI required under Section 11 of this Consent Agreement, including interim and final corrective measures, in compliance with Cal. Code Regs., title 22, section 66265.142.

12.2. As directed by DTSC, within 90 days of DTSC's approval of CMI Workplan, Respondent shall establish and maintain a financial assurance mechanism(s) for the CMI required under Section 11 of this Consent Agreement, including interim and final corrective measures for the Facility for the benefit of DTSC and in the amount of the approved cost estimate pursuant to paragraph 12.1 of this Consent Agreement. The financial assurance mechanisms must comply with California Code of Regulations, title 22, section 66265.143, must be approved in form and substance by DTSC, and may include a performance or surety bond, liability insurance, an escrow performance guarantee account, a trust fund, or any other mechanism acceptable to DTSC. The mechanism shall be established to allow DTSC access to the funds to undertake the CMI tasks required by this Consent Agreement if Respondent is unable or unwilling to undertake the required actions.

12.3 If, based on new information or changed conditions, DTSC believes that the estimated cost to complete the work under the Consent Agreement has decreased or increased from the amount set forth in paragraph 12.1 above, DTSC may notify Respondent in writing of the revised estimated cost of the remaining work. Within 45 days of receiving notice of the revised cost estimate, Respondent will increase or decrease the amount of financial assurance required under paragraph 12.1 above in accordance with DTSC's revised cost estimate.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

13. DTSC must comply with CEQA insofar as activities required by this Consent Agreement are projects subject to CEQA. If requested by DTSC, Respondent shall provide all information necessary to facilitate any CEQA analysis. DTSC will make an initial determination regarding the applicability of CEQA. If the activities are not exempt from CEQA, DTSC may conduct an Initial Study. Based on the results of the Initial Study, DTSC will determine if a Negative Declaration or an Environmental Impact Report (EIR) should be prepared. DTSC will prepare and process any such Negative Declaration. However, should DTSC determine that an EIR is necessary, such an EIR would be prepared under a separate agreement between DTSC and Respondent. DTSC shall, whenever possible, coordinate the CEQA activities with Interim Measures (if required) and Closure Plan public review and approval processes (provided for under Section 7 of this Consent Agreement) to prevent duplicative efforts.

DTSC APPROVAL

14.1. Subject to Section 23 of this Consent Agreement, Respondent shall revise any workplan, report, specification, or schedule in accordance with DTSC's written comments. Respondent shall submit to DTSC any revised documents by the due date specified by DTSC. Revised submittals are subject to DTSC's approval or disapproval.

14.2. Upon receipt of DTSC's written approval, Respondent shall commence work and implement any approved workplan in accordance with the schedule and provisions contained therein.

14.3. Any DTSC-approved workplan, report, specification, or schedule required under this Consent Agreement shall be deemed incorporated into this Consent Agreement.

SUBMITTALS

15.1. Beginning with the first full month following the effective date of this Consent Agreement, Respondent shall provide DTSC with quarterly progress reports of corrective action activities conducted pursuant to this Consent Agreement. Progress reports are due on the 15th day of the first month following the close of each reporting period. The progress reports shall conform to the Scope of Work for Progress Reports contained in Attachment 7. DTSC may adjust the frequency of progress reporting to be consistent with site-specific activities.

15.2. Any report or other document submitted by Respondent pursuant to this Consent Agreement shall be signed and certified by the project coordinator, a responsible corporate officer, or a duly authorized representative.

15.3. The certification required by paragraph 13.2 above, shall be in the following form:

I certify that as to those portions of this submittal for which I can personally verify the accuracy, the information contained in or accompanying this submittal is true, accurate, and complete. As to those portions of this submittal for which I cannot personally verify the accuracy, I certify that this submittal and all attachments were prepared at my direction in accordance with procedures designed to assure that qualified personnel properly gathered and evaluated the information submitted.

Signature: _____

Name: _____

Title: _____

Date: _____

15.4. Respondent shall provide three copies of all documents including, but not limited to, workplans, reports, and correspondence. Submittals specifically exempted from this copy requirement are all progress reports and correspondence of less than 15 pages, of which one copy is required.

15.5. Unless otherwise specified, all reports, correspondence, approvals, disapprovals, notices, or other submissions relating to this Consent Agreement shall be in writing (which includes email – attachments only) and shall be sent to the current Project Coordinators.

PROPOSED CONTRACTOR/CONSULTANT

16. All work performed pursuant to this Consent Agreement shall be under the direction and supervision of a professional engineer or professional geologist, registered in California, with expertise in hazardous waste site cleanup. Respondent's contractor or consultant shall have the technical expertise sufficient to fulfill his or her responsibilities. Within 14 days of the effective date of this Consent Agreement, Respondent shall notify DTSC Project Coordinator in writing of the name, title, and qualifications of the professional engineer or registered geologist and of any contractors or consultants and their personnel to be used in carrying out the terms of this Consent Agreement.

ADDITIONAL WORK

17. DTSC may determine or Respondent may propose that certain tasks, including investigatory work, engineering evaluation, or procedure/methodology modifications are necessary in addition to, or in lieu of, the tasks and deliverables included in any part of DTSC-approved workplans. If applicable, DTSC shall request in writing that Respondent perform the additional work and shall specify the basis and reasons for DTSC's determination that the additional work is necessary. Within 14 days after the receipt of such determination, Respondent may confer with DTSC to discuss the additional work DTSC has requested. If required by DTSC, Respondent shall submit to DTSC a workplan for the additional work. Such workplan shall be submitted to DTSC within 30 days of receipt of DTSC's determination or according to an alternate schedule established by DTSC. Upon DTSC's approval of a workplan, or upon DTSC's approval of such additional work where a workplan was not required, Respondent shall implement it in accordance with the provisions and schedule contained therein. In addition to all other requirements under this Consent Agreement, the need for, and disputes concerning, additional work are subject to the dispute resolution procedures specified in this Consent Agreement.

QUALITY ASSURANCE

18.1. All sampling and analyses performed by Respondent under this Consent Agreement shall follow applicable DTSC and USEPA guidance for sampling and analysis. Workplans shall contain quality assurance/quality control and chain of

custody procedures for all sampling, monitoring, and analytical activities. Any deviations from the DTSC-approved workplans must be approved by DTSC prior to implementation, must be documented, including reasons for the deviations, and must be reported in the applicable report.

18.2. The names, addresses, and telephone numbers of the California State certified analytical laboratories Respondent proposes to use must be specified in the applicable workplans.

SAMPLING AND DATA/DOCUMENT AVAILABILITY

19.1. Respondent shall submit to DTSC the results of all sampling and/or tests or other data generated by its employees, agents, consultants, or contractors pursuant to this Consent Agreement.

19.2. Respondent shall notify DTSC in writing at least three days prior to beginning each separate phase of field work approved under any workplan required by this Consent Agreement. If Respondent believes it must commence emergency field activities without delay, Respondent may seek emergency telephone authorization from DTSC Project Coordinator or, if the Project Coordinator is unavailable, his/her Branch Chief, to commence such activities immediately.

19.3. At the request of DTSC, Respondent shall provide or allow DTSC or its authorized representative to take split or duplicate samples of all samples collected by Respondent pursuant to this Consent Agreement. Similarly, at the request of Respondent, DTSC shall allow Respondent or its authorized representative to take split or duplicate samples of all samples collected by DTSC under this Consent Agreement.

ACCESS

20. Subject to DTSC's compliance with an approved Health and Safety Plan for the Facility, Respondent agrees to provide DTSC and its representatives access at all reasonable times to the Facility and any off-site property to which access is required for implementation of this Consent Agreement and shall permit such persons to inspect and copy records, files, photographs and documents, including all sampling and monitoring data, that pertain to work undertaken pursuant to this Consent Agreement and that are within the possession or under the control of Respondent, its contractors or consultants. If Respondent, despite reasonable efforts, can not obtain access to any parcels located away from the Facility which are necessary to fulfill any requirement under this Agreement, DTSC may, at its discretion, assist Respondent in obtaining access to such parcels.

TRANSFERABILITY

21.1. This Consent Agreement may be assigned by Respondent to any subsequent purchaser of the Facility subject to the prior written approval of the assignment by DTSC. DTSC shall not unreasonably withhold its consent to any assignment, provided that the proposed assignee: (i) agrees to assume Respondent's obligations under this Consent Agreement and be bound by this Consent Agreement;

(ii) meets the financial assurance requirements outlined in Section 12 of this Consent Agreement; and (iii) is not in violation and was not found to be in violation during the past three years of the Hazardous Waste Control Law, the hazardous waste regulations in Title 22, California Code of Regulations, or an order or consent agreement with the DTSC.

21.2. If Respondent seeks to assign this Consent Agreement, it shall notify the DTSC at least 30 days in advance of the date of assignment and shall, to the extent Respondent knows, provide the DTSC with the following information about the assignee: (i) name and address, (ii) the assignee's proposed use of the premises; and (iii) the assignee's banking, financial and other credit information; (iv) documentation of compliance with financial assurance criteria in Section 12 of this Consent Agreement.

21.3. DTSC shall review any proposed assignment and within 90 days of receipt of the notice of assignment, DTSC shall issue a written determination either approving or disapproving the assignment, or requesting additional information or additional review time. DTSC's failure to complete its review of any proposed assignment, request additional information or additional time shall not constitute approval of the proposed assignment.

21.4. If DTSC consents to the assignment, Respondent shall submit to DTSC the written agreement executed by the assignee whereby the assignee expressly agrees to be bound by this Consent Agreement. Following an assignment approved by the DTSC, and following receipt by DTSC of the assignee's agreement to be bound by the Consent Agreement, Respondent shall be relieved of all obligations and responsibilities under the Consent Agreement, and DTSC shall have no recourse regarding environmental investigation or remediation of the Facility under the Consent Agreement against Respondent.

21.5. Nothing in this Section or in this Consent Agreement shall release the Respondent from liability under applicable state and federal laws for releases of Constituents of Concern at and/or from the Facility under applicable state and federal laws.

RECORD PRESERVATION

22.1 Respondent shall retain during the pendency of this Consent Agreement and for a minimum of six years after its termination all data, records, and documents that relate in any way to the performance of this Consent Agreement or to hazardous waste management and/or disposal at the Facility. Respondent shall notify DTSC in writing 90 days prior to the destruction of any such records, and shall provide DTSC with the opportunity to take possession of any such records. Such written notification shall reference the effective date, caption, and docket number of this Consent Agreement and shall be addressed to:

Stephen W. Lavinger, Chief
Tiered Permitting Corrective Action Branch
Hazardous Waste Management Program
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, CA 90630

22.2. If Respondent retains or employs any agent, consultant, or contractor for the purpose of carrying out the terms of this Consent Agreement, Respondent will require any such agents, consultants, or contractors to provide Respondent a copy of all documents produced pursuant to this Consent Agreement

22.3. All documents pertaining to this Consent Agreement shall be stored at a location agreed to by the parties to afford easy access by DTSC and its representatives.

DISPUTE RESOLUTION

23.1. The parties agree to use their best efforts to resolve all disputes informally. The parties agree that the procedures contained in this section are the sole administrative procedures for resolving disputes arising under this Consent Agreement. If Respondent fails to follow the procedures contained in this section, it shall have waived its right to further consideration of the disputed issue.

23.2. If Respondent disagrees with any written decision by DTSC pursuant to this Consent Agreement, Respondent's Project Coordinator shall orally notify DTSC's Project Coordinator of the dispute. The Project Coordinators shall attempt to resolve the dispute informally.

23.3. If the Project Coordinators cannot resolve the dispute informally, Respondent may pursue the matter formally by placing its objection in writing. Respondent's written objection must be forwarded to Chief, Tiered Permitting Corrective Action Branch, Hazardous Waste Management Program, Department of Toxic Substances Control, with a copy to DTSC's Project Coordinator. The written objection must be mailed to the Branch Chief within 14 days of Respondent's receipt of DTSC's written decision. Respondent's written objection must set forth the specific points of the dispute and the basis for Respondent's position.

23.4. DTSC and Respondent shall have 14 days from DTSC's receipt of Respondent's written objection to resolve the dispute through formal discussions. This period may be extended by DTSC for good cause. During such period, Respondent may meet or confer with DTSC to discuss the dispute.

23.5. After the formal discussion period, DTSC will provide Respondent with its written decision on the dispute. DTSC's written decision must reflect any agreements reached during the formal discussion period and be signed by the Branch Chief or his/her designee.

23.6. During the pendency of all dispute resolution procedures set forth above, the time periods for completion of work required under this Consent Agreement that are affected by such dispute shall be extended for a period of time not to exceed the actual time taken to resolve the dispute. The existence of a dispute shall not excuse, toll, or suspend any other compliance obligation or deadline required pursuant to this Consent Agreement.

RESERVATION OF RIGHTS

24.1. DTSC reserves all of its statutory and regulatory powers, authorities, rights, and remedies, which may pertain to Respondent's failure to comply with any of the requirements of this Consent Agreement. Respondent reserves all of its statutory and regulatory rights, defenses and remedies, as they may arise under this Consent Agreement. This Consent Agreement shall not be construed as a covenant not to sue, release, waiver, or limitation on any powers, authorities, rights, or remedies, civil or criminal, that DTSC or Respondent may have under any laws, regulations or common law.

24.2. DTSC reserves the right to disapprove of work performed by Respondent pursuant to this Consent Agreement and to request that Respondent perform additional tasks.

24.3. DTSC reserves the right to perform any portion of the work consented to herein or any additional site characterization, feasibility study, and/or remedial actions it deems necessary to protect human health and/or the environment. DTSC may exercise its authority under any applicable state or federal law or regulation to undertake response actions at any time. DTSC reserves its right to seek reimbursement from Respondent for costs incurred by the State of California with respect to such actions. DTSC will notify Respondent in writing as soon as practicable regarding the decision to perform any work described in this section.

24.4. If DTSC determines that activities in compliance or noncompliance with this Consent Agreement have caused or may cause a release of hazardous waste and/or hazardous waste constituents, or a threat to human health and/or the environment, or that Respondent is not capable of undertaking any of the work required, DTSC may order Respondent to stop further implementation of this Consent Agreement for such period of time as DTSC determines may be needed to abate any such release or threat and/or to undertake any action which DTSC determines is necessary to abate such release or threat. The deadlines for any actions required of Respondent under this Consent Agreement affected by the order to stop work shall be extended to take into account DTSC's actions.

24.5. This Consent Agreement is not intended to be nor shall it be construed to be a permit. This Consent Agreement is not a substitute for, and does not preclude DTSC from requiring, any hazardous waste facility permit, post-closure permit, closure plan or post closure plan. The parties acknowledge and agree that DTSC's approval of any workplan, plan, and/or specification does not constitute a warranty or representation that the workplans, plans, and/or specifications will achieve the required cleanup or performance standards. Compliance by Respondent with the terms of this Consent Agreement shall not relieve Respondent of its obligations to comply with the Health and Safety Code or any other applicable local, state, or federal law or regulation.

OTHER CLAIMS

25. Except as provided in this Consent Agreement, nothing in this Consent Agreement shall constitute or be construed as a release by DTSC or Respondent from any claim, cause of action, or demand in law or equity against any person, firm,

partnership, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken or migrating from the Facility.

BANKRUPTCY PROCEEDINGS

26.1. Nothing in this Consent Agreement or in any confirmed plan of reorganization in the Bankruptcy Case ("the Plan") shall be deemed to release, discharge or nullify any environmental liability to any California governmental unit that any entity would be subject to as the current tenant, current owner or current operator of the Facility after the Effective Date of this Consent Agreement. Nothing in this Consent Agreement or in the Plan shall operate to discharge liabilities to California governmental units that are not Claims as defined in Section 101(5) of the Bankruptcy Code.

26.2. Respondent shall comply with the Bankruptcy Court's Settlement Procedures Order with respect to this Consent Agreement, or, if necessary, move for the Bankruptcy Court's approval of this Consent Agreement. Respondent agrees that this Consent Agreement shall be binding on Respondent, the reorganized debtor, and any subsequent owner who has acquired the Facility subject to Section 21 (Transferability) of this Consent Agreement. Respondent further agrees that it will not propose or seek confirmation of a plan of reorganization that is inconsistent with the terms of this Consent Agreement with respect to the Facility.

26.3. This Consent Agreement shall resolve DTSC's Proof of Claim filed in the Bankruptcy Case on July 28, 2006, provided that Respondent complies with Settlement Procedures Order or, if necessary, the Consent Agreement is approved by the Bankruptcy Court.

COMPLIANCE WITH WASTE DISCHARGE REQUIREMENTS

27. Respondent shall comply with all applicable waste discharge requirements issued by the State Water Resources Control Board or a California Regional Water Quality Control Board.

OTHER APPLICABLE LAWS

28. All actions required by this Consent Agreement shall be conducted in accordance with the requirements of all applicable local, state, and federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

REIMBURSEMENT OF DTSC'S COSTS

29.1. Respondent shall pay DTSC's past costs incurred prior to the effective date of this Consent Agreement in response to releases of Constituents of Concern at and/or from the Facility. From August 2005 to March 2007, DTSC has past costs in the amount of \$ 61,993. Respondent shall pay DTSC's past costs within 60 days of the effective date of this Consent Agreement.

29.2. Respondent shall pay DTSC's costs incurred in the implementation of this Consent Agreement.

29.3. An estimate of DTSC's costs is attached as Attachment 8 of this Consent Agreement showing the amount of \$91,091.00. It is understood by the parties that this amount is only an estimate for the activities shown on Attachment 8 and it may differ from the actual costs incurred by DTSC in overseeing these activities or in implementing this Consent Agreement. Respondent shall reimburse DTSC for all costs pursuant to Health and Safety Code Division 20, Chapter 6.66, whether in excess of this estimate or not. DTSC will provide additional cost estimates to Respondent as the work progresses under the Consent Agreement.

29.4. DTSC shall have an allowed administrative expense claim in the Bankruptcy Case for advance payments in the amount of \$91,091.00. DTSC's claim shall be treated as a priority administrative expense under sections 503(b) and 507(a)(1) of the Bankruptcy Code. Respondent shall make an advance payment to DTSC in the amount of \$45,545.50 within 30 days of the effective date of this Consent Agreement, unless a delay in payment is required by the Bankruptcy Court. If the advance payment exceeds DTSC's costs, DTSC will refund the balance within 120 days after the execution of the Acknowledgment of Satisfaction pursuant to Section 31 of this Consent Agreement.

29.5. DTSC will provide Respondent with a billing statement at least quarterly, which will include the name(s) of the employee(s), identification of the activities, the amount of time spent on each activity, and the hourly rate charged. If Respondent does not pay an invoice within 60 days of the date of the billing statement, the amount may be subject to interest as provided by Health and Safety Code section 25360.1, unless a delay is required by the Bankruptcy Court.

29.6. DTSC will retain all costs records associated with the work performed under this Consent Agreement as required by state law. DTSC will make all documents that support the DTSC's cost determination available for inspection upon request, as provided by the Public Records Act.

29.7. Any dispute concerning DTSC's costs incurred pursuant to this Consent Agreement is subject to the Dispute Resolution provision of this Consent Agreement and the dispute resolution procedures as established pursuant to Health and Safety Code section 25269.2. DTSC reserves its right to recover unpaid costs under applicable state and federal laws.

29.8. Unless a delay is required by the Bankruptcy Court, all payments shall be made within 30 days of the date of the billing statement by check payable to the Department of Toxic Substances Control and shall be sent to:

Accounting Unit
Department of Toxic Substances Control
P. O. Box 806
Sacramento, California 95812-0806

All checks shall reference the name of the Facility, the Respondent's name and address, and the docket number of this Consent Agreement. Copies of all checks and letters transmitting such checks shall be sent simultaneously to DTSC's Project Coordinator.

29.9. Respondent agrees that DTSC's claim against Respondent for future costs of response, corrective action, closure and/or remediation for the Facility shall not be discharged in the Bankruptcy Case.

MODIFICATION

30.1. This Consent Agreement may be modified by mutual agreement of the parties. Any agreed modification shall be in writing, shall be signed by both parties, shall have as its effective date the date on which it is signed by all the parties, and shall be deemed incorporated into this Consent Agreement.

30.2. Any requests for revision of an approved workplan requirement must be in writing. Such requests must be timely and provide justification for any proposed workplan revision. DTSC has no obligation to approve such requests, but if it does so, such approval will be in writing and signed by the Chief, Tiered Permitting Corrective Action Branch, Hazardous Waste Management Program, Department of Toxic Substances Control, or his or her designee. Any approved workplan revision shall be incorporated by reference into this Consent Agreement.

TERMINATION AND SATISFACTION

31. The provisions of this Consent Agreement shall be deemed satisfied upon the execution by both parties of an Acknowledgment of Satisfaction (Acknowledgment). DTSC will prepare the Acknowledgment for Respondent's signature. The Acknowledgment will specify that Respondent has demonstrated to the satisfaction of DTSC that the terms of this Consent Agreement including payment of DTSC's costs have been satisfactorily completed. The acknowledgement will also affirm the closure and termination of the interim status and permit by rule authorization previously granted by DTSC. The acknowledgement will inform Respondent of its continuing obligation to preserve all records after the rest of the Consent Agreement is satisfactorily completed.

EFFECTIVE DATE

32. The effective date of this Consent Agreement shall be the date on which this Consent Agreement has been signed by all the parties, and the Respondent has complied with the Bankruptcy Court's Settlement Procedures Order with respect to the

Consent Agreement, or if necessary, the date when the Bankruptcy Court's order approving of the Consent Agreement becomes final. Except as otherwise specified "days" means calendar days.

SIGNATORIES

33. Each undersigned representative certifies that he or she is fully authorized to enter into this Consent Agreement.

DATE: June 5, 2007

BY: Original signed by Karen L. Healy
Representing Respondent

Karen L. Healy, Vice President,
Corporate Affairs, Marketing and
Operations Support Group
Print Name and Title of Representative

DATE: June 11, 2007

BY: Original signed by Stephen Lavinger
Steve Lavinger, Branch Chief
Tiered Permitting and Corrective Action Branch
Hazardous Waste Management Program
Department of Toxic Substances Control

This Agreement posted on DTSC's website does not include all attachments from the original document. If you need copies of a specific document, please contact the DTSC project manager.